

134-12/MFM
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN ADMIRALTY

In the Matter of the

Complaint of Plaintiffs, McALLISTER
TOWING & TRANSPORTATION CO., INC. as
Owner and McALLISTER TOWING OF NEW
YORK, LLC, as Owner Pro Hac Vice of the Tug
PATRICE McALLISTER for Exoneration
from/or Limitation of Liability

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**PETITIONERS/PLAINTIFFS'
RESPONSE TO CLAIM OF JOHN A.
HOBAN AS ADMINISTRATOR AND
PERSONAL REPRESENTATIVE OF
THE ESTATE OF MATTHEW J.
HOBAN WITH CROSS-CLAIM**

12 Civil 2505 (LAK)

McALLISTER TOWING & TRANSPORTATION CO., Inc. as Owner and McALLISTER
TOWING OF NEW YORK, LLC, as Owner Pro Hac Vice of the Tug PATRICE McALLISTER
(hereinafter referred to as "McALLISTER") by their attorneys, Freehill, Hogan & Mahar LLP,
responds to the Claim of John A. Hoban, as Administrator and Personal Representative of the
Estate of Matthew J. Hoban's Claim (hereinafter referred to as "Hoban's Claim") dated July 2,
2012 upon information and belief as follows:

FIRST: McALLISTER denies any knowledge or information to form a belief as to
each and every allegation contained in paragraphs numbered "1," "2," "3," "4," "26," "31," "45,"
"47," "50," "52," "55," "57," "60," "62," "65," "67," "70," "72," "75," "77," "80" and "82" of
Hoban's Claim.

SECOND: McALLISTER admits the allegations contained in paragraphs numbered "5," "6," "7," "8," "11," "15," "16," "18," "25," "30," "34," "38" and "42" of Hoban's Claim.

THIRD: McALLISTER denies each and every allegation contained in paragraphs numbered "9," "10," "12," "13," "14," "17," "22," "29," "33," "37," "41," "46," "51," "56," "61," "66," "71," "76" and "81" of Hoban's Claim

FOURTH: McALLISTER admits the allegations contained in paragraphs numbered "19" and "20" of Hoban's Claim except for those portions of the vessel operated and/or controlled by Matthew Hoban.

FIFTH: Answering paragraph numbered "21" of Hoban's Claim, McAllister admits that on or about March 24, 2012 the Tug PATRICE McALLISTER departed Toledo, Ohio. McALLISTER denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph numbered "21."

SIXTH: Answering paragraph numbered "23" of Hoban's Claim, McAllister admits that a fire broke out on the vessel on March 27, 2012 while in navigable waters. McAllister denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph numbered "23."

SEVENTH: Answering paragraph numbered "24" of Hoban's Claim, McAllister admits that on March 27, 2012 Matthew J. Hoban sustained personal injuries resulting in pre-death conscious pain and suffering. McAllister denies any knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph numbered "24."

SEVENTH: McALLISTER denies each and every allegation contained in paragraphs numbered "27," "35," "39," "43," "48," "53," "58," "63," "68," "73," "78" and "83" and refers all questions of law to the Court.

EIGHTH: Answering paragraph numbered "28," "32," "36," "40," "44," "49," "54," "59," "64," "69," "74" and "79" of Hoban's Claim, McALLISTER repeats and reiterates each and every answer and denial contained in paragraphs numbered "FIRST through SEVENTH " inclusive of its Response to Hoban's Claim with the same force and effect as though fully set forth at length herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

NINTH: Claimant is not entitled to a jury trial.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

TENTH: Matthew J. Hoban's nieces and nephews may not recover damages for lost nurture, guidance and/or pecuniary loss.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

ELEVENTH: Matthew J. Hoban was the vessel's Chief Engineer, and had worked as such on a regular basis since the vessel was newly built. In the event that the fire was caused by a patent unseaworthy condition in the vessel's port engine and/or pre-lube assembly, then his injuries and death may have been caused in whole or in part by his failure to perform the duties assumed as a term of his employment and/or by his own negligence.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

TWELFTH: The incident onboard the PATRICE McALLISTER, was not the result of any negligence, fault or want of due care on the part of McAllister.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTEENTH: In the event that this Honorable Court lacks jurisdiction over Ohio Machinery Company d/b/a Ohio CAT ("Ohio Cat") then this action should be transferred to Ohio

federal court pursuant to 28 U.S.C. 1404(a).

**AS AND FOR A CROSS-CLAIM AGAINST
OHIO MACHINERY COMPANY d/b/a OHIO CAT**

COUNT I: INDEMNIFICATION

FOURTEENTH: If Claimant JOHN A. HOBAN and/or the Estate of Matthew J. Hoban and/or Kelly Shultz and/or James Shultz (hereinafter "Claimants") sustained any loss, damages and/or injuries from the reported incident, said loss, damages and/or injuries were caused solely by reason of a breach of contract, breach of warranty, breach of warranty of workmanlike performance, negligence, omissions and/or other culpable conduct of Ohio CAT its employees and/or agents without any culpable conduct of McALLISTER.

FIFTEENTH: If any verdict, or judgment or settlement is recovered against McALLISTER, for the loss, damages and/or injuries alleged in Claimants' Claim, such liability will have been brought about or caused solely by the breach of contract, breach of warranty, breach of warranty of workmanlike performance, negligence, omissions and/or culpable conduct of Ohio Cat, its employees, and/or agents, without any culpable conduct of McALLISTER, and therefore, McALLISTER is entitled to indemnity from Ohio Cat in an amount equal to the total sum of any judgment or settlement together with attorneys' fees, costs and expenses incurred in defending this action.

COUNT II: CONTRIBUTION

SIXTEENTH: If Claimants sustained any loss, damages, and/or injuries from the reported incident, said loss, damages and/or injuries were caused in whole or in part by reason of the breach of contract, breach of warranty, breach of warranty of workmanlike performance, negligence,

omissions and/or other culpable conduct of Ohio Cat, its employees and/or agents.

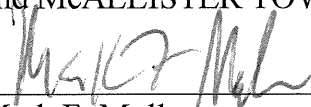
SEVENTEENTH; If any verdict, or judgment or settlement is recovered against McALLISTER for the loss, damages and/or injuries alleged in Claimants' Claim, such liability will have been brought about or caused in whole or in part by the breach of contract, breach of warranty, breach of warranty of workmanlike performance, negligence, omissions and/or culpable conduct of Ohio Cat, its employees and/or agents and therefore, McALLISTER is entitled to contribution from Ohio Cat, inclusive of attorneys' fees, costs and expenses incurred in defending this action from Ohio Cat in accordance with Ohio Cat's fault.

WHEREFORE, McALLISTER demands that Claimants' Claim dated July 2, 2012 be dismissed as against McALLISTER and that judgment be entered in McALLISTER's favor against Ohio Cat for any and all damages recovered by Claimants whether by judgment or by settlement together with such other and further relief as the Justice of the cause may require.

Dated: October 11, 2012

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